

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,

Plaintiff,

v.

ZYDUS PHARMACY, et al.,

Defendants.

No. 1:21-cv-00343-NONE-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PLAINTIFF'S MOTION TO PROCEED *IN*
FORMA PAUPERIS

(Doc. Nos. 10, 12)

Plaintiff Allen Hammler is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 3, 2021, the assigned magistrate judge filed findings and recommendations, recommending that plaintiff's motion to proceed *in forma pauperis* ("IFP") be denied because plaintiff has sufficient funds to pay the filing fee in full. (Doc. No. 12.) The magistrate judge provided plaintiff 14 days to file objections to the findings and recommendations. (*Id.* at 2.) Plaintiff filed objections on June 21, 2021. (Doc. No. 13.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of this case. Having carefully reviewed the file, including plaintiff's objections, the court finds the findings and recommendations to be supported by the record and proper analysis.

1 According to the inmate trust account statement attached to his motion, plaintiff had
2 \$1,830.45 in his account as of May 14, 2021, (Doc. No. 10 at 4), approximately two weeks before
3 he filed his motion to proceed *in forma pauperis*. The magistrate judge reasoned that plaintiff did
4 not qualify for IFP status because his account balance is sufficient to pay the \$402 filing fee for
5 this action. (Doc. No. 12 at 1); *see also* 28 U.S.C. § 1915(a)(1); *Adkins v. E.I. DuPont de*
6 *Nemours & Co.*, 335 U.S. 331, 339 (1948) (to qualify for IFP status, the applicant must show that
7 he “cannot because of his poverty ‘pay or give security for the costs and still be able to provide’
8 himself and dependents ‘with the necessities of life’”).

9 In his objections, plaintiff does not dispute that he has sufficient funds to pay the filing
10 fee. Rather, he argues that he should not be required to pay the fee because the source of his
11 funds is “economic impact payments.” (Doc. No. 13 at 2-6.) Plaintiff also states that he needs
12 the funds in order “to feed himself and take care of his household needs.” (*Id.* at 3.)

13 These objections do not undermine the magistrate judge’s reasoning. First, plaintiff
14 provides no authority for the proposition that economic stimulus payments cannot be considered
15 in determining whether IFP applicants are able to pay court filing fees. Although plaintiff
16 suggests that certain automatic withdrawals from his account have not applied to these payments,
17 (*see id.* at 5-6), this is a separate matter from whether he is financially capable of paying the filing
18 fee for this case. Plaintiff also attaches to his objections Judicial Council of California Form EJ-
19 155, which lists various provisions of the California Code of Civil Procedure that exempt certain
20 kinds of assets from levy on a judgment. (*See* Doc. No. 13, Exh. D.) But, the filing fee due in
21 this case is not a judgment that the court is levying, so the provisions listed on Form EJ-155 are
22 not applicable.

23 Second, plaintiff does not explain why he requires these payments to “take care of his . . .
24 needs.” (*Id.* at 3.) He is presently incarcerated and so his “basic needs are provided by the State,”
25 *Clifton v. Curry*, No. 2:20-cv-02149-JDP, 2020 WL 6526126, at *1 (E.D. Cal. 2020). As the
26 magistrate judge correctly explained, although a party need not be completely destitute to proceed
27 IFP, *Adkins*, 335 U.S. at 339-40, “the same even-handed care must be employed to assure that
28 federal funds are not squandered to underwrite, at public expense, . . . the remonstrances of a

1 suitor who is financially able . . . to pull his own oar,” *Anderson v. California*, No. 10 CV 2216
2 MMA AJB, 2010 WL 4316996, at *1 (S.D. Cal. Oct. 27, 2010) (quoting *Temple v. Ellerthorpe*,
3 586 F. Supp. 848, 850 (D.R.I. 1984)).

4 Although the balance in plaintiff’s trust fund account is modest, plaintiff is financially
5 able to pay the filing fee.

6 Accordingly,

- 7 1. The findings and recommendations issued on June 3, 2021 (Doc. No. 12) are adopted
8 in full;
- 9 2. Plaintiff’s motion to proceed *in forma pauperis* (Doc. No. 10) is denied;
- 10 3. Within 30 days of the date of service of this order, plaintiff shall pay the \$402 filing
11 fee in full; and,
- 12 4. Failure to pay the filing fee within the time provided will result in dismissal of this
13 action.

14 IT IS SO ORDERED.

15 Dated: July 20, 2021

16 
UNITED STATES DISTRICT JUDGE